

**Public Employees' Retirement Board**

**August 13, 2015**

**Topic: 457(b) – Deferred Compensation Plan Document Revisions**

The 457(b) Plan document is revised to incorporate 2015 legislative changes.

**Staff Recommendation:**

Adopt revised plan document effective 8/13/2015

**Board Motion:**

☐ uphold staff recommendation

Or

☐ Board pleasure

\_\_\_\_\_  
Moved by

\_\_\_\_\_  
Seconded by

\_\_\_\_\_  
Vote

Effective ~~May 8, 2014~~ August 13, 2015

**TABLE OF CONTENTS**  
**(Continued)**

**Page**

**THE STATE OF MONTANA PUBLIC EMPLOYEE  
DEFERRED COMPENSATION PLAN**

**MONTANA PUBLIC EMPLOYEES' RETIREMENT  
BOARD**

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## **TABLE OF CONTENTS**

	<b><u>Page</u></b>
ARTICLE I - DEFINITIONS .....	1
1.01 "Account" .....	1
1.02 "Administrator" .....	1
1.03 "Adoption Agreement" .....	2
1.04 "Annual Deferral" .....	2
1.05 "Applicable Form" .....	2
1.06 "Beneficiary" .....	2
1.07 "Code" .....	2
1.08 "Compensation" .....	2
1.09 "Designated Roth Contribution" .....	3
1.10 "Differential Wage Payment" .....	3
1.11 "Disability" or "Disabled" .....	3
1.12 "Employee" .....	3
1.13 "Employer" .....	3
1.14 "Includible Compensation" .....	4
1.15 "Investment Option" .....	4
1.16 "MCA" .....	4
1.17 "Normal Retirement Age" .....	4
1.18 "Participant" .....	4
1.19 "Participating Employer" .....	4
1.20 "Participation Agreement" .....	4
1.21 "Plan Sponsor" .....	4
1.22 "Plan Year" .....	4
1.23 "RothContribution Account" .....	4
1.24 "Severance From Employment" .....	4
1.25 "Service Manager" .....	5
1.26 "State" .....	5
1.27 "Trust" .....	5
1.28 "Trust Fund" .....	5
1.29 "Trustees" .....	5
ARTICLE II - ELECTION TO DEFER COMPENSATION .....	5
2.01 Participation .....	5
2.02 Minimum Deferral .....	5
2.03 Election Required for Participation .....	5
2.04 Amendment of Annual Deferral Election .....	6
2.05 Leave of Absence .....	6
2.06 Effective Date of Deferrals .....	6

**TABLE OF CONTENTS**  
**(Continued)**

	<b><u>Page</u></b>
2.07 Deferrals after Severance from Employment, Including Sick, Vacation, and Back Pay Under an Eligible Plan .....	6
<u>2.08</u> Designated Roth Contributions .....	6
ARTICLE III - EMPLOYER PARTICIPATION .....	7
3.01 State and State Entities .....	7
3.02 Adoption by Political Subdivision .....	7
3.03 Plan Termination by Political Subdivision .....	8
ARTICLE IV - LIMITATIONS ON DEFERRALS .....	8
4.01 Basic Annual Limitation .....	8
4.02 Age 50 Catch-up Annual Deferral Contributions .....	9
4.03 Special Section 457 Catch-up Limitation .....	9
4.04 Coordination of Limits .....	10
4.05 Employer Contribution Limits .....	10
4.06 Correction of Excess Deferrals .....	11
4.07 Disregard Excess Deferral .....	11
ARTICLE V - ACCOUNTS AND REPORTS .....	11
5.01 Account .....	11
5.02 Statements of Account to Participants .....	11
5.03 Statements of Account to the Administrator .....	11
5.04 Year End Reports .....	11
5.05 Account Reviews .....	12
ARTICLE VI - VALUATION OF ACCOUNT .....	12
6.01 Valuation .....	12
6.02 Deposits .....	12
ARTICLE VII - TRUST .....	12
7.01 Trust Status .....	12
7.02 Trust Fund .....	12
7.03 Trustee .....	12
ARTICLE VIII - INVESTMENT OF ANNUAL DEFERRALS .....	13
8.01 Investment Options .....	13
8.02 Remittance of Deferrals .....	13
8.03 Investment of Deferrals .....	13
8.04 Investment Default .....	13

**TABLE OF CONTENTS**  
**(Continued)**

	<b><u>Page</u></b>
ARTICLE IX - BENEFITS.....	13
9.01 Benefit Payments .....	13
9.02 Payment Options.....	14
9.03 Lump Sum Settlement .....	14
9.04 Minimum Distribution Rules.....	14
9.05 Designated Beneficiary.....	15
9.06 Payments to Beneficiary .....	15
9.07 Voluntary In-Service Distribution .....	16
9.08 Involuntary In-Service Distribution.....	16
9.09 Procedures for Unforeseeable Emergency Distributions.....	17
9.10 Unforeseeable Emergency Distribution.....	17
9.11 In-Service Distributions From Rollover Account.....	18
9.12 Family Law Orders .....	18
9.13 Plan Loans .....	18
ARTICLE X - EMPLOYER OBLIGATIONS.....	18
ARTICLE XI - PLAN TO PLAN TRANSFERS .....	18
11.01 Direct Transfers Among Plans of the Same Employer.....	18
11.02 Plan-to-Plan Transfers from the Plan to the Plan of Another Employer .....	19
11.03 Plan-to-Plan Transfers to the Plan .....	19
11.04 Permissive Service Credit Transfers.....	20
11.05 Direct Transfers to this Plan .....	20
ARTICLE XII - ROLLOVER TO THIS PLAN .....	20
ARTICLE XIII - ROLLOVER FROM THIS PLAN .....	21
13.01 Plan Distributions and Withholding Requirements .....	21
13.02 Definitions .....	21
ARTICLE XIV - ADMINISTRATION OF PLAN .....	22
14.01 Compliance with Code Section 457 .....	22
14.02 Administrator Duties and Powers .....	22
14.03 Advice.....	23
14.04 Delegation by Administrator .....	23
14.05 Fiduciary Insurance .....	23
14.06 Payment of Benefits.....	24
14.07 Payment of Expenses .....	24

**TABLE OF CONTENTS**  
**(Continued)**

	<b><u>Page</u></b>
ARTICLE XV - CLAIMS PROCEDURE .....	24
ARTICLE XVI - AMENDMENT OF THE PLAN .....	24
ARTICLE XVII - TERMINATION.....	25
17.01 Termination of Participating Employer .....	25
17.02 Termination of Plan .....	25
ARTICLE XVIII - NONASSIGNABILITY .....	25
18.01 Nonassignment .....	25
18.02 Rights .....	25
ARTICLE XIX - MISCELLANEOUS .....	25
19.01 Federal Taxes.....	25
19.02 Contract.....	26
19.03 Conflicts.....	26
19.04 Limitation on Rights .....	26
19.05 USERRA and Heart Compliance.....	26
19.06 USERRA Compliance .....	27
19.07 Procedure When Distributee Cannot Be Located .....	27
19.08 Erroneous Payments .....	28
19.09 Mistaken Contributions .....	28
19.10 Release .....	28
19.11 Liability.....	28
19.12 Governing Laws.....	28
19.13 Necessary Parties to Disputes .....	28
19.14 Severability .....	28
19.15 Supersession .....	28
19.16 Counterparts.....	28

## THE STATE OF MONTANA PUBLIC EMPLOYEE DEFERRED COMPENSATION PLAN

**Whereas**, the Public Employees' Retirement Board ("Board") on behalf of the State of Montana established the terms of the State of Montana Deferred Compensation Plan by a Plan Document executed February 1, 1990, and that Plan Document permitted amendment of the Plan Document;

**Whereas**, pursuant to Title 19, Chapter 50 of the Montana Code Annotated, and Section 457 of the Internal Revenue Code of 1986, as amended, the Plan Document was subsequently restated to comply with the Code;

**Whereas**, there have been certain changes in the governing federal and state law, particularly with respect to clarification of the term "normal retirement age"; the waiver of 2009 required minimum distributions and the implementation of Designated Roth Accounts effective July 1, 2013;

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~~**Whereas**, effective February 11, 2010 the Board adopted the State of Montana Public Employees Pooled Trust as part of this Plan; and~~

~~**Whereas**, the Board determined to clarify the definition of "Participant" to ensure consistency with 26 CFR § 1.457-2(j) retroactive to January 1, 2008; -and~~

Whereas, the Board changed the investment default fund effective December 29, 2012.....from the stable value fund to the participant's age-appropriate target date fund;

**Therefore**, effective ~~May 8, 2014~~ August 13, 2015 and subject to the dates set forth above, the Board on behalf of the State of Montana hereby amends and completely restates the State of Montana Public Employee Deferred Compensation Plan (hereinafter called the "Plan"). The Plan consists of the provisions set forth in this document, as amended and restated; the applicable provisions in Title 19, Chapter 50; and the applicable provision of the Montana -and the terms of any Participation Agreement.

The Plan is effective with respect to each Employee on the date the Plan is effective or on the date the Employee becomes a Participant by executing the Participation Agreement, whichever is later. The Plan Document is effective as signed and supersedes all previously issued State of Montana Deferred Compensation Plan documents.

### **ARTICLE I - DEFINITIONS**

**1.01** "Account" means the bookkeeping account maintained with respect to each Participant which reflects the value of the deferred Compensation credited to the Participant, including the Participant's Annual Deferrals the earnings or losses of the Trust Fund allocable to the Participant (net of Trust Fund Expenses), any transfers for the Participant's benefit, and any distribution made to the Participant or the Participant's Beneficiary. The Account includes a

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separate account for Designated Roth Contributions, Rollover Contributions and plan-to-plan transfers made into this Plan for a Participant from another 457(b) plan.

**1.02** *"Administrator"* means the Montana Public Employees' Retirement Board, and includes the Service Manager with regard to duties delegated to the Service Manager by the Board.

**1.03** *"Adoption Agreement"* means the contract between an Employer that is a political subdivision and the Trustees to permit participation in the Plan.

**1.04** *"Annual Deferral"* means an amount of Compensation deferred by a Participant in any taxable year as a pre-tax deferral, Designated Roth Contribution, or both pursuant to Article II and deposited by the Administrator.

**1.05** *"Applicable Form"* means the appropriate form as designated and furnished by the Administrator to make an election or provide a notice as required by the Plan. If a written election or consent is not specifically required by the Code, the Administrator may prescribe a verbal, electronic or telephonic instruction in lieu of or in addition to a written form.

**1.06** *"Beneficiary"* means the person or persons designated by a Participant pursuant to an Applicable Form to receive any benefit payable upon the Participant's death, or if none, the Participant's estate.

**1.07** *"Code"* means the Internal Revenue Code of 1986, as amended.

**1.08** *"Compensation"* means all cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election to defer compensation under Article IV). Compensation that would otherwise be paid for a payroll period that begins before Severance from Employment is treated as an amount that would otherwise be paid or made available before an Employee has a Severance from Employment.

(a) In addition, any compensation described in this section that is paid within 2½ months after an employee's Severance from Employment, or, if later, the end of the Plan Year during which the Severance from Employment occurred, does not fail to be compensation merely because it is paid after the Employee's Severance from Employment. The following are types of post-severance payments that are not excluded from compensation because of timing if they are paid within 2½ months following Severance from Employment:

(1) Payments that, absent a Severance from Employment, would have been paid to the Employee while the Employee continued in employment with the Employer and are regular compensation for services during the Employee's regular working hours, compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar compensation;



(2) Payments for accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued; or

(3) Payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the Employee at the same time if the Employee had continued employment with the Employer and only to the extent that the payment is includible in the Employee's gross income.

(b) Any payments not described above are not considered compensation if paid after Severance from Employment, even if they are paid within 2½ months following Severance from Employment, or, if later, the end of the Plan Year during which the Severance from Employment occurred.

(c) Compensation also includes payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code Section 414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

(d) Compensation also includes compensation described in ~~Prop.~~ Treas. Reg. § 1.415(c)-2(g)(4) with respect to Participants who are permanently and totally disabled.

**1.09** *"Designated Roth Contribution"* means an after-tax contribution by a participant to the participant's deferred compensation account that is:

(a) Designated irrevocably by the Participant at the time of the deferral election as a Roth Contribution that is being made in lieu of all or a portion of the pre-tax deferrals the Participant is otherwise eligible to make under the Plan; and

(b) Treated by the Employer as includible in the Participant's income at the time the Participant would have received that amount in cash if the Participant had not made a deferral election.

**1.10** *"Differential Wage Payment"* means any payment which: (a) is made by an employer to an individual with respect to any period during which the individual is performing service in the uniformed services while on active duty for a period of more than 30 days; and (b) represents all or a portion of the wages that the individual would have received from the employer if the individual were performing services for the employer.

**1.11** *"Disability" or "Disabled"* means a total inability of the Participant to perform the Participant's services by reason of physical or mental incapacity. The disability must be incurred while the Participant is an active Participant and must be one of permanent duration or extended duration, as determined by the Administrator on the basis of competent medical opinion.

**1.12** *"Employee"* means any individual who performs services for an Employer for Compensation on a regular basis, specifically including any salaried employee or elected or

appointed official. The term also includes an independent contractor who performs services for an Employer.

**1.13** *"Employer"* means the State of Montana or any political subdivision of the State, as defined in 19-50-101, MCA, which enters into a contract to extend this plan to its employees pursuant to Article III.

**1.14** *"Includible Compensation"* means an Employee's Compensation within the meaning of Code Section 415(c)(3) required to be reported as actual wages in box 1 of Form W-2 for a year for services to the Employer, but subject to a maximum of \$200,000 (or such higher maximum as may apply under section 401(a)(17) of the Code) and increased (up to the dollar maximum) by any compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election to defer Compensation under Section 4.03).

**1.15** *"Investment Option"* means an investment fund which forms part of the Trust Fund as selected and monitored by the Trustees.

**1.16** *"MCA"* means the Montana Code Annotated.

**1.17** *"Normal Retirement Age"* means the age selected by a Participant that fixes the eligibility period for utilizing the catch-up limitation under Section 4.03. The Normal Retirement Age selected by a Participant may not be ~~earlier- later~~ than the earliest date that the Participant would become eligible to retire and receive unreduced benefits as if a member of the defined benefit pension plan of the Participant's Employer and the age may not be later than 70½. A Participant may only select one Normal Retirement Age for purposes of the catch-up. A Participant's Normal Retirement Age established for catch-up does not have any bearing on the age at which the Participant actually retires. In the absence of an Employer defined benefit pension plan and for independent contractors, Normal Retirement Age shall be 65. For qualified police and firefighters, the Normal Retirement Age may be any age between age ~~40-50~~ and age 70½.

**Commented [A1]:** The NRA selected by the participant can not be later than the NRA associated with the member's underlying DB plan, or age 65 if no DB plan.

**Commented [A2]:** Update due to 2015 Gen Rev change 19-50-104

**1.18** *"Participant"* An individual who is currently deferring compensation, or who has previously deferred compensation under the plan by salary reduction and who has not received a distribution of his or her entire Account under the Plan. Only individuals who perform services for the Employer, either as an Employee or an independent contractor, may defer Compensation under the plan.

**Commented [A3]:** Two definitions in one paragraph. Will need to check internal citations and correct as necessary.

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**1.19** *"Participating Employer"* means any political subdivision electing to adopt this Plan pursuant to Article III.

**1.20** *"Participation Agreement"* means the Applicable Form completed by an Employee to participate in the Plan.

**1.21** *"Plan Sponsor"* means the Montana Public Employees' Retirement Board.

**1.22** *"Plan Year"* means the calendar year.

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1.231.23 *"Roth Contribution Account"* means a separate account within a deferred compensation plan established under this chapter that is composed of after-tax contributions made pursuant to section 402A of the Internal Revenue Code, 26 U.S.C. 402A.

1.231.24 *"Severance From Employment"* means severance of a Participant's employment with the Employer for any reason, including retirement, within the meaning of Code Section 402(e)(4)(D)(i)(III). A Participant shall be deemed to have severed employment with the Employer for purposes of the Plan when, in accordance with the established personnel practices of the Employer, the employment relationship is considered actually terminated. However, Severance From Employment for an independent contractor occurs when (a) at least 12 months have expired since the date on which the last contract, pursuant to which the independent contractor provided any service to the Employer, was terminated, and (b) the independent contractor has not performed services for the Employer during that 12-month period.

1.241.25 *"Service Manager"* means the person or organization appointed by the Administrator to perform third party service and administrative functions.

1.251.26 *"State"* means the State of Montana.

1.261.27 *"Trust"* means the trust established by the Trustees pursuant to a written agreement that constitutes a valid trust under the law of Montana.

1.271.28 *"Trust Fund"* means the assets of the Trust in all Investment Options selected by the Trustees.

1.281.29 *"Trustees"* means the Montana Public Employees' Retirement Board created in 2-15-1009, MCA.

If a term is defined in § 19-50-101, MCA, that definition applies to the term as used in this Plan. Words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate. Words used herein in the masculine or feminine gender shall be construed to include the feminine or masculine gender where appropriate.

## ARTICLE II - ELECTION TO DEFER COMPENSATION

**2.01** *Participation.* A portion of an Employee's Compensation shall be deferred for any calendar month only if the Employee enters into a Participation Agreement pursuant to Section 2.03 of the Plan prior to the beginning of such month. Provided, however, a portion of a new Employee's Compensation payable in the calendar month during which the Participant first becomes an Employee shall be deferred if the Employee enters into a Participation Agreement pursuant to Section 2.03 of the Plan on or before the first day on which the Participant performs services for the Employer.

**2.02** *Minimum Deferral.* The Administrator may establish a minimum Annual Deferral and/or minimum deposit amount, and may change such minimums from time to time. The current minimum deferral is \$10.00 per calendar month.

**2.03 Election Required for Participation.** An Employee may elect to become a Participant by executing a Participation Agreement to defer a portion of his or her Compensation (and have that amount contributed as an Annual Deferral on his or her behalf) and filing it with the Administrator. This participation election shall be made on the Participation Agreement provided by the Administrator under which the Employee agrees to be bound by all the terms and conditions of the Plan. The participation election shall also include designation of investment funds and a designation of Beneficiary. An Employee shall become a Participant as soon as administratively practicable following the date the Employee files a Participation Agreement. Any such election shall remain in effect until a new election is filed.

**2.04 Amendment of Annual Deferral Election.** Subject to other provisions of the Plan, a Participant may at any time revise his or her participation election, including a change of the amount of his or her Annual Deferrals, his or her investment direction and his or her designated Beneficiary. Unless the election specifies a later effective date, a change in the amount of the Annual Deferrals shall take effect as of the first day of the next following month or as soon as administratively practicable if later. A change in the investment direction shall take effect as of the date provided by the Administrator on a uniform basis for all Employees. A change in the Beneficiary designation shall take effect when the election is accepted by the Administrator.

**2.05 Leave of Absence.** Unless an election is otherwise revised, if a Participant is absent from work by leave of absence, Annual Deferrals under the Plan shall continue to the extent that Compensation continues.

**2.06 Effective Date of Deferrals.** In all cases, a deferral request shall be considered effective as of the date the Employer withholds the Annual Deferral from the Participant's pay.

**2.07 Deferrals after Severance from Employment, Including Sick, Vacation, and Back Pay Under an Eligible Plan.** A Participant who has not had a Severance From Employment may elect to defer accumulated sick pay, accumulated vacation pay, and back pay if the requirements of section 457(b) of the Code are satisfied. These amounts may be deferred for any calendar month only if an agreement providing for the deferral is entered into before the beginning of the month in which the amounts would otherwise be paid or made available and the Participant is an employee on the date the amounts would otherwise be paid or made available. Compensation that would otherwise be paid for a payroll period that begins before Severance from Employment is treated as an amount that would otherwise be paid or made available before an employee has a Severance from Employment. In addition, deferrals may be made for former employees with respect to Compensation described in Section 1.08(a) of the Plan (relating to certain compensation paid within 2½ months following Severance from Employment), Compensation described in Treas. Reg. § 1.415(c)-2(e)(4), (g)(4), and (g)(7) (relating to Compensation paid to participants who are permanently and totally disabled, or Compensation relating to qualified military service under section 414(u) of the Code) provided those amounts represent Compensation described in Treas. Reg. § 1.415(c)-2(e)(3)(i).

**2.08 Designated Roth Contributions.**

(a) Each Participant may make Designated Roth Contributions; provided, however, that a Participant shall not make a Designated Roth Contribution to the Plan for any Plan Year to the

extent such Designated Roth Contributions combined with any pre-tax deferrals to the Plan would exceed the limitations of Article IV.

**(1) General Application.** This Subsection 2.08 will apply to Designated Roth Contributions beginning on or after July 1, 2013.

(i) As of the effective date under (1), the Plan will accept Designated Roth Contributions made on behalf of Participants. A Participant's Designated Roth Contributions will be allocated to a separate account maintained for such deferrals as described in 2.08(a)(2).

(ii) Unless specifically stated otherwise, Designated Roth Contributions will be treated as elective deferrals for all purposes under the Plan.

**(2) Separate Accounting.** Contributions and withdrawals of Designated Roth Contributions will be credited and debited to the Roth Contribution Account maintained for each Participant.

(i) The Plan will maintain a record of the amount of Designated Roth Contributions in each Participant's Roth Contributions Account.

(ii) Gains, losses and other credits or charges must be separately allocated on a reasonable and consistent basis to each Participant's Roth Contribution Account and the Participant's other accounts under the Plan.

(iii) No contributions other than Designated Roth Contributions and properly attributable earnings will be credited to each Participant's Roth Contribution Account.

**(3) In-Plan Roth Conversion.** Conversion of existing pre-tax deferrals into the Designated Roth Account will not be allowed under the Plan.

### **ARTICLE III - EMPLOYER PARTICIPATION**

**3.01 State and State Entities.** This plan is available to Employees of the following Employers: the State of Montana, state universities, state community colleges, and political subdivisions.

**3.02 Adoption by Political Subdivision.** Any political subdivision, as defined in 19-50-101, MCA, may make the Plan available to its employees pursuant to 19-50-201, MCA, if it takes the following actions:

(a) The governing body of the political subdivision must pass a resolution to enter into an adoption agreement with the Trustees authorizing its employees to participate in the Plan. The resolution must contain a summary of the major provisions of the Plan.

(b) The resolution must indicate the date of adoption.

(c) The resolution must specify that the political subdivision shall abide by the terms of the Plan, including all investment and administrative agreements of the Plan, and all applicable provisions of the Code.

(d) The Adoption Agreement must specify that the political subdivision agrees that the Trustees are the Administrator of the Plan and agrees to the rules and conditions established by the Trustees for the proper administration of the Plan.

(e) Employer must complete an Adoption Agreement with the Trustees.

The Board shall determine whether the resolution and Employer actions comply with this section and, if they do, shall provide appropriate forms for the Employer and Employees to implement the participation.

The political subdivision must agree that employees may make contributions to only this Plan, not to additional 457 plans sponsored by that subdivision. However, the preceding sentence is not meant to preclude the political subdivision's employees from having existing account balances retained in prior 457 plans.

Upon entry into participation in this Plan, a political subdivision with an existing 457 Plan must choose one of the following:

(a) leave existing account balances in the prior 457 plan with all new contributions being made to this Plan;

(b) do a direct transfer from the prior plan to this Plan pursuant to Section 11.03; or

(c) allow employees to elect to retain existing account balances in the prior 457 plan (or plans) or to do direct transfers to this Plan. In this case, all new contributions would be made to this Plan, regardless of whether employees chose to maintain their prior account balances in the prior 457 plan or transfer such balances to this Plan.

**3.03 Plan Termination by Political Subdivision.** A Participating Employer may terminate its participation in the Plan if it takes the following actions:

(a) The governing body of the political subdivision must adopt a resolution terminating its Employees' rights to participate in the Plan.

(b) The resolution must specify when the right to participate in the Plan shall end.

(c) The Adoption Agreement may be revoked or amended in the manner prescribed in the existing Adoption Agreement between the Participating Employer and the Administrator.

The Trustees shall determine whether the resolution complies with this section and all applicable federal and state laws, shall determine an appropriate effective date and shall provide appropriate forms to the Participating Employer and the Participants to terminate ongoing participation. The assets attributable to the terminating employer shall be handled in accordance with Section 17.01.

#### **ARTICLE IV - LIMITATIONS ON DEFERRALS**

**4.01 *Basic Annual Limitation.*** The maximum amount of the Annual Deferral under the Plan for any calendar year shall not exceed the lesser of (a) the Applicable Dollar Amount or (b) the Participant's Includible Compensation for the calendar year. The Applicable Dollar Amount is the amount established under section 457(e)(15) of the Code applicable as set forth below:

**For the following years:**

2014

2014-2015 or thereafter

**The Applicable Dollar Amount is:**

~~\$16,500~~ 17,500

~~\$17,500~~ 18,000 Adjusted for cost-of-living after ~~2014~~ 2015 to the extent provided under section 415(d) of the Code.

**4.02 *Age 50 Catch-up Annual Deferral Contributions.*** A Participant who will attain age 50 or more by the end of the calendar year is permitted to elect an additional amount of Annual Deferrals, up to the maximum age 50 catch-up Annual Deferrals for the year. The maximum dollar amount of the age 50 catch-up Annual Deferrals for a year is as follows:

**For the following years:**

~~2013~~ 2014

~~2014~~ 2015 or thereafter

**The maximum age 50 catch-up dollar amount is:**

\$5,500

~~\$5,500~~ 6,000, adjusted for cost-of-living after ~~2014~~ 2015 to the extent provided under the Code.

**4.03 *Special Section 457 Catch-up Limitation.*** If the applicable year is one of a Participant's last 3 calendar years ending before the year in which the Participant attains Normal Retirement Age as that term is defined in Section 1.17 and the amount determined under this Section exceeds the amount computed under Sections 4.01 and 4.02, then the Annual Deferral limit under this Article IV shall be the lesser of:

(a) An amount equal to two times the Section 4.01 Applicable Dollar Amount for such year; or

(b) The sum of:

(1) An amount equal to (i) the aggregate Section 4.01 limit for the current year plus each prior calendar year beginning after December 31, 2001 during which the Participant was an Employee under the Plan, minus (ii) the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus

(2) An amount equal to (i) the aggregate limit referred to in section 457(b)(2) of the Code for each prior calendar year beginning after December 31, 1978 and before January 1, 2002 during which the Participant was an Employee (determined without regard to Sections 4.02 and 4.03), minus (ii) the aggregate contributions to Pre-2002 Coordination Plans (as defined by Treasury regulations and as provided in Section 4.04) for such years.

However, in no event can the deferred amount be more than the Participant's Compensation for the year.

#### **4.04 Coordination of Limits.**

(a) Participant Covered By More Than One Eligible Plan. If the Participant is or has been a participant in one or more other eligible plans within the meaning of section 457(b) of the Code, then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Article IV. For this purpose, the Administrator shall take into account any other such eligible plan maintained by the Employer and shall also take into account any other such eligible plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.

(b) Pre-Participation Years. In applying Section 4.03, a year shall be taken into account only if (1) the Participant was eligible to participate in the Plan during all or a portion of the year and (2) Compensation deferred, if any, under the Plan during the year was subject to the Basic Annual Limitation described in Section 4.01 or any other plan ceiling required by section 457(b) of the Code.

(c) Pre-2002 Coordination Years. For purposes of Section 4.03(b)(ii)(B), "contributions to Pre-2002 Coordination Plans" means any employer contribution, salary reduction or elective contribution under any other eligible Code section 457(b) plan, or a salary reduction or elective contribution under any Code section 401(k) qualified cash or deferred arrangement, Code section 402(h)(1)(B) simplified employee pension (SARSEP), Code section 403(b) annuity contract, and Code section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in section 501(c)(18) of the Code, including plans, arrangements or accounts maintained by the Employer or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of Section 4.03(b)(ii)(B) to the extent that the total of such contributions does not exceed the aggregate limit referred to in section 457(b)(2) of the Code for that year.

(d) Current Rule. For 2002 and thereafter, any amounts contributed by the Participant to a tax-sheltered annuity pursuant to Code Section 403(b) or to a 401(k) plan pursuant to Code



Section 402(e)(3) shall not reduce the maximum Annual Deferral under Sections 4.01, 4.02 and 4.03.

(e) Coordination Responsibility. The Participant is responsible for ensuring coordination of these limits.

**4.05** Employer Contribution Limits. If the Employer agrees to make contributions to the Plan on behalf of a Participant to this Plan, the Employer contributions shall be deemed made by the Participant as additional Annual Deferrals. For purposes of administering Sections 4.01, 4.02 and 4.03 of this Plan, Employer contributions shall be processed as payroll deferrals, shall apply toward the maximum deferral limits in the taxable year that they are made, and must comply with any procedure established by the Administrator.

**4.06** Correction of Excess Deferrals. If the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above, or the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another eligible deferred compensation plan under section 457(b) of the Code for which the Participant provides information that is accepted by the Administrator, then the Annual Deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant.

**4.07** Disregard Excess Deferral. An individual is treated as not having deferred compensation under a plan for a prior taxable year to the extent Excess Deferrals under the plan are distributed, as described in Section 4.06. To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as an Excess Deferral for those prior years.

#### **ARTICLE V - ACCOUNTS AND REPORTS**

**5.01** Account. The Administrator or a duly appointed Service Manager shall maintain an Account with respect to each Participant, and that Account shall be credited with the Participant's Annual Deferral for each pay period. The balance of such account shall be adjusted daily to reflect any distribution to the Participant and all interest, dividends, account charges and changes of market value resulting from the investment of the Participant's Annual Deferral. All Plan records, including individual account information, that are maintained by the Service Manager shall be the exclusive property of the Trustees. Account includes any account established under Article XII for rollover contributions and Article XI for plan-to-plan transfers made for a Participant.

**5.02** Statements of Account to Participants. A written report of the status of each Participant's Account shall be furnished by the Service Manager to the Participants within thirty (30) days after the end of each Plan quarter. All reports to Participants shall be based on the fair market value of investments credited to their Accounts as of the reporting dates. Participant reports shall be deemed to have been accepted by the Participant as correct unless written notice to the contrary is received by the Service Manager within thirty (30) days after the mailing or distribution of a report to the Participant.

**5.03** Statements of Account to the Administrator. A written report of the Plan assets shall be furnished by the Service Manager to the Administrator within thirty (30) days after the end of each Plan quarter. The Administrator may request additional reports from the Service Manager, in the Administrator's sole discretion.

**5.04** Year End Reports. A written report shall be prepared as of December 31st of each year and submitted to the Administrator by the Service Manager within thirty (30) days (and maintained on file by the Administrator) showing the assets held under the Plan, a schedule of all receipts and disbursements and all material transactions of the Plan during the preceding year. This report shall be in a form and shall contain other information as the Administrator deems appropriate. The Service Manager shall also provide such information to the Administrator as the Administrator deems necessary or appropriate for preparation of its annual report.

**5.05** Account Reviews. In accordance with Montana law, the Administrator's records shall be open to inspection during normal business hours by any Participant or a designated representative of the Employer or a Participant. However, no Participant may review any record specifically relating to any other Participant.

#### **ARTICLE VI - VALUATION OF ACCOUNT**

**6.01** Valuation. The managers of each Investment Option shall value the investments in their Fund each business day based on acceptable industry practices. All daily transactions shall be based on that day's closing market values. The Service Manager shall apply such values to appropriate Participant Accounts.

**6.02** Deposits. In all cases, deposits of deferrals shall be treated as actually made only as of the date the funds are accepted as in good order by the Service Manager.

#### **ARTICLE VII - TRUST**

**7.01** Trust Status. All assets held in connection with the Plan, including all amounts of compensation deferred pursuant to the Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, property or rights shall be held in trust for the exclusive benefit of Participants and their Beneficiaries under the Plan. No part of the assets and income of the Plan shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries and for defraying reasonable expenses of the Plan.

**7.02** Trust Fund. Effective July 1, 1998, to the extent required by Section 457(g) of the Code, all amounts of compensation deferred pursuant to the Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, property or rights held as part of the Plan as of July 1, 1998, shall be held, managed, invested and distributed as part of the Trust Fund in accordance with the provisions of the Plan. All contributions to the Plan must be transferred by the Employers to the Trust Fund pursuant to Section 8.02. All benefits under the Plan shall be distributed solely from the Trust Fund pursuant to Article IX.

**7.03** Trustee. The Montana Public Employees' Retirement Board is the trustee for the assets of the Trust Fund.

**7.04** Adoption of the Pooled Trust. The State of Montana Public Employees Pooled Trust ("Pooled Trust") is hereby adopted as part of this Plan.

**7.05** Transfer of Funds to the Pooled Trust. In accordance with this Plan and the Pooled Trust, the Administrator may, from time to time, transfer funds of this Plan to and from the Pooled Trust."

#### **ARTICLE VIII - INVESTMENT OF ANNUAL DEFERRALS**

**8.01** Investment Options. The Trustees shall evaluate annually the available Investment Options for Participants (or Beneficiaries upon the death of the Participant). Following such evaluation, the Trustees shall determine available Investment Options in their sole discretion. The Participants may direct the investment of their accounts among the Investment Options selected by the Trustees. The Administrator shall follow the Participants' (or Beneficiaries') directions with respect to the investment of each Participant's (or Beneficiary's) Account.

**8.02** Remittance of Deferrals. All amounts of compensation deferred under the Plan shall be transferred by the Employers to the Trust following the effective date of the deferral under Section 2.06. In no event shall amounts of compensation deferred under the Plan be transferred by the Employer to the Plan later than five (5) business days after the effective date of the deferral under Section 2.06.

**8.03** Investment of Deferrals. All Annual Deferrals shall be transferred to the Participant selected Investment Options within three (3) business days after receipt of the deferral in good order from the Employer.

**8.04** Investment Default. If a Participant does not have a valid investment direction on file, any amount in that Participant's account and any Annual Deferral shall be invested in the ~~stable value fund~~ age-appropriate target date fund selected from time to time by the Board. In such event, the Participant shall be deemed to have directed that option for his or her Account.

**Commented [A4]:** We changed the default a while back.

#### **ARTICLE IX - BENEFITS**

**9.01** Benefit Payments. Benefits shall be paid from the Trust Fund in accordance with this Article following a Participant's Severance from Employment, Death, Disability or the occurrence of an unforeseeable emergency, as described in Sections 9.09 and 9.10. Benefits payable to a Participant or a Beneficiary shall be based upon the value of the Participant's Account.

**(a)** Benefit Distributions At Retirement or Other Severance from Employment. Upon retirement or other Severance from Employment (other than due to death), a Participant is entitled to receive a distribution of his or her Account under any form of distribution permitted under Section 9.02 commencing at the date elected under Section 9.02. If a Participant does not elect otherwise, the distribution shall be paid as soon as practicable following Normal Retirement

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Age or, if later, following retirement or other Severance from Employment and payment shall be made in monthly installments of the minimum annual payments described in Section 9.02.

**(b) Death.** In the event of the Participant's death prior to the commencement of benefits under paragraph (a), the value of the Participant's Account shall be paid to the Beneficiary under a payment option elected by the Beneficiary under Section 9.02, subject to the restrictions in Section 9.06. Such benefits shall be payable commencing within 60 days after receipt by the Administrator of satisfactory proof of the Participant's death. However, if the Beneficiary is the spouse of the Participant, then the spouse may elect within 60 days of Participant's death, to defer distribution to a date not later than the date when the Participant would have attained age 70 ½.

**(c) Disability.** Upon Severance From Employment with the Employer because of becoming Disabled, a Participant may elect to have benefits commence on a date which is no later than the required beginning date under Code Section 401(a)(9), as specified in Section 9.04. Such election shall be made within 45 days after Severance From Employment due to Disability. If no election is made, benefits will commence 75 days after Severance From Employment due to Disability. A Participant may change the commencement date of distribution of the Account to a later date otherwise permitted under this Article. If a Participant has elected, in accordance with the Plan, to delay the commencement of distributions to a later date, then the Participant may make one additional election to further delay the commencement of distribution, provided that the election is filed before distribution actually begins and the later commencement date meets the required distribution commencement date provisions of Code Sections 401(a)(9) and 457(d)(2). All benefits shall be paid under a payment option under Section 9.02.

**9.02 Payment Options.** The election of a payment option by a Participant or a Beneficiary under Section 9.01 must be made no later than 30 days before the commencement of such benefits. Subject to restrictions established by the Administrator, the Plan shall permit payout options in the form of lump sums, periodic payments of a fixed amount or fixed duration or life contingent annuities. Absent such an election, the Account will be paid in a periodic payment. However, no payout option will be available with a payment of less than \$50 per month.

**9.03 Lump Sum Settlement.** Notwithstanding anything in this Plan to the contrary, if a Participant's Account balance is less than \$5,000 (or such lesser amount as determined by the Administrator from time to time) at the time of Severance from Employment, the Administrator may effect a lump sum distribution of the Participant's Account.

**9.04 Minimum Distribution Rules.** (a) Notwithstanding any provision of this Plan to the contrary, any distribution under the Plan shall be made by the Administrator in accordance with Code Sections 401(a)(9) and 457(d) and the regulations established thereunder as they are amended. No payment option may be selected by a Participant unless the amounts payable to the Participant are expected to be at least equal to the minimum distribution required under Section 401(a)(9) of the Code. The amounts payable also must satisfy the minimum distribution incidental benefit requirements of Section 401(a)(9)(G) of the Code if applicable.

(b) Payment of the Accounts of a Participant shall begin no later than the "required beginning date." For purposes of this Section, "required beginning date" means April 1 of the calendar year following the later of (1) the calendar year in which the Participant reaches age seventy and one-half (70-1/2), or (2) the calendar year in which the Participant retires. For purposes of this Section, "first distribution year" means the calendar year described in (1) or (2) in the preceding sentence.

(c) Except as otherwise required by Code Section 457(d)(2), the amount to be distributed each year, beginning with distributions attributable to the first distribution year, shall not be less than the quotient obtained by dividing the Participant's benefit by the lesser of (1) the applicable life expectancy, or (2) if the Participant's spouse is not the designated beneficiary, the applicable divisor specified in Code Section 401(a)(9) or the regulations promulgated thereunder. Distributions after the death of the Participant to the spouse shall be distributed using the applicable life expectancy as the applicable divisor.

(d) The Participant is responsible for coordinating between any other 457 Plans he or she has and this Plan to meet the minimum distribution rules.

(e) (1) Notwithstanding anything above, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) ('2009 RMDs'), and who would have satisfied that requirement by receiving distributions that are (i) equal to the 2009 RMDs or (ii) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least 10 years ('Extended 2009 RMDs'), will not receive those distributions for 2009 unless the Participant or Beneficiary elects to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence. However, those Participants and ~~Beneficiaries~~Beneficiaries who receive required minimum distributions through the automatic payment system will continue to receive 2009 RMDs unless he or she elects not to receive the 2009 RMDs.

(2) Further, the 2009 RMDs and Extended 2009 RMDs will be treated as eligible rollover distributions in 2009.

**9.05 Designated Beneficiary.** (a) A Participant shall have the right to file with the Administrator an Applicable Form designating the Beneficiary or Beneficiaries who shall receive the benefits payable under the Plan in the event of the Participant's death. No Beneficiary designation shall take effect until an Applicable Form is signed by the Participant and received and accepted by the Administrator. If the Participant dies without a Beneficiary form on file with the Administrator, the benefit payments shall be made to the Participant's estate.

(b) A Participant shall have the right to designate at least one primary and contingent Beneficiary and to indicate whether the Beneficiaries in each class are to share equally or according to specified percentages. A contingent Beneficiary shall receive benefit payments only if there is no surviving primary Beneficiary. If a Beneficiary predeceases the Participant,

the surviving Beneficiaries in the same class (i.e., primary or contingent) will share equally the deceased Beneficiary's share. In the event of the death of a Beneficiary, after the Beneficiary has become entitled to receive benefits, the remaining benefits to which that beneficiary was entitled shall be paid to the estate of the Beneficiary.

**9.06 *Payments to Beneficiary.*** In the event of the Participant's death, any remaining benefit shall be distributed according to the following:

(a) If the Participant had begun receiving periodic payments of a fixed amount or fixed duration from the Plan, the balance of the Account shall be paid to the Beneficiary at least as rapidly as under the payment option selected by the Participant.

(b) If the Participant had begun receiving payments under an annuity contract, the Beneficiary shall be bound by all restrictions of that contract and the form of payment selected thereunder, and remaining payments, if any, shall be paid to the Beneficiary under the contract.

(c) If the Participant dies before distributions have commenced, a spouse Beneficiary may delay the commencement of benefits until as late as the date the Participant would have attained age 70 ½ and may elect to receive payments at such time over the Beneficiary's life expectancy.

(d) If the Participant dies before distributions have commenced, a non-spouse Beneficiary may take a lump sum or a periodic payment. In the case of a lump sum, payment must be made no later than one year after the date of the Participant's death. Prior to 2002, periodic distributions after the death of the Participant to someone other than the Participant's spouse shall be distributed within fifteen (15) years of the Participant's death. From 2002 and thereafter, distributions after the death of the Participant to someone other than the Participant's spouse shall be distributed over a period shorter than or equal to the Beneficiary's life expectancy at the time the distribution commences. In the case of any periodic distribution, payment must commence no later than one year after the date of the Participant's death.

(e) Notwithstanding the foregoing, any payment to an estate shall be made in a lump sum.

**9.07 *Voluntary In-Service Distribution.*** (a) A Participant who is an active employee of an Employer may elect to receive a distribution of the Participant's entire Account under the Plan before a Severance from Employment if the following requirements are met:

(a) the Participant's entire Account balance does not exceed \$5,000 on the date of the distribution,

(b) the Participant has not previously received an in-service distribution of the Participant's Account under Section 457(e)(9)(A) of the Code, and

(c) no amount has been deferred under the Plan with respect to the Participant during the two-year period ending on the date of the in-service distribution.

(d) This election must be made in accordance with the procedures established by the Administrator.

**9.08 Involuntary In-Service Distribution.** *The Plan Administrator may distribute the entire Account to a Participant who is an active employee of an Employer if the following requirements are met:*

(a) the Participant's entire Account balance does not exceed the amount specified in Code Section 411(a)(11)(A), or such lesser amount as established by the Board, on the date of the distribution,

(b) the Participant has not previously received an in-service distribution of the Participant's Account under Code Section 457(e)(9)(A), and

(c) no amount has been deferred under the Plan with respect to the Participant during the two-year period ending on the date of the in-service distribution.

**9.09 Procedures for Unforeseeable Emergency Distributions.** Notwithstanding any other provision herein and subject to guidelines and requirements set forth in procedures established by the Trustees and subject to Section 9.10, Participants may request that benefits be paid in the event of an unforeseeable emergency.

(a) A three member Emergency Withdrawal Committee shall establish procedures to review and approve or deny all requests for an unforeseeable emergency distribution. If the application for payment is approved by the Emergency Withdrawal Committee, payment shall be effected as soon as practicable thereafter.

(b) The decision of the Emergency Withdrawal Committee concerning financial hardship may be appealed to the Board. The Board's determination is final.

(c) The Trustees may establish restrictions following a distribution pursuant to this Section.

**9.10 Unforeseeable Emergency Distribution.**

(a) Distribution. If the Participant has an unforeseeable emergency before retirement or other Severance from Employment, the Participant may elect to receive a lump sum distribution equal to the amount requested or, if less, the maximum amount determined by the Administrator to be permitted to be distributed under this Section and Section 9.09.

(b) Unforeseeable emergency defined. An unforeseeable emergency is defined as a severe financial hardship of the Participant resulting from: an illness or accident of the Participant, the Participant's beneficiary, the Participant's or Participant's beneficiary's spouse, or the Participant's or Participant's beneficiary's dependent (and for taxable years beginning on and after January 1, 2005, as defined in section 152 of the Code, without regard to Section 152(b)(1), (b)(2), and (d)(1)(B) of the Code); loss of the Participant's or the Participant's beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster);

the need to pay for the funeral expenses of the Participant's spouse or dependent (and for taxable years beginning on and after January 1, 2005, as defined in section 152 of the Code, without regard to Section 152(b)(1), (b)(2), and (d)(1)(B) of the Code); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or the Participant's beneficiary. For example, the imminent foreclosure of or eviction from the Participant's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Except as otherwise specifically provided for in this Section, neither the purchase of a home nor the payment of college tuition is an unforeseeable emergency.

(c) Unforeseeable emergency distribution standard. A distribution on account of unforeseeable emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of deferrals under the plan.

(d) Distribution necessary to satisfy emergency need. Distributions because of an unforeseeable emergency may not exceed the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).

**9.11 In-Service Distributions From Rollover Account.** If a Participant has a separate account attributable to rollover contributions to the Plan, the Participant may at any time, in coordination with the distribution requirements applicable to these rollover amounts, elect to receive a distribution of all or any portion of the amount held in the rollover account.

**9.12 Family Law Qualified Domestic Relations Orders.** ~~Family-law Qualified domestic relation orders and orders and~~ child support orders under Administrative Rules of Montana 2.43.5110 through 2.43.5112 shall be honored by the Plan. Notwithstanding Section 18.01, if a judgment, decree or other (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State ("qualified domestic relations order"), then the amount of the Participant's Account shall be paid in the form of an immediate lump sum and to the person or persons so directed in the qualified domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the qualified domestic relations order.

**Commented [A6]:** The DRO must be determined to be "qualified" in order for the distribution to occur.

**9.13 Plan Loans.** Plan loans to Participants shall not be permitted.

## **ARTICLE X - EMPLOYER OBLIGATIONS**

Each Employer is required to remit correct deferrals on a timely basis pursuant to Section 8.02. Beyond that, an Employer has no obligation to each Participant. An Employer shall not be

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liable for losses arising from expense charges of any kind or from depreciation or shrinkage in the value of investments made under this Plan.

#### **ARTICLE XI - PLAN TO PLAN TRANSFERS**

**11.01** *Direct Transfers Among Plans of the Same Employer.* A transfer from this Plan to another eligible governmental plan of the same Employer and a transfer to this Plan from another eligible governmental plan of the same Employer is permitted under the following conditions:

(a) The transfer is from an eligible governmental plan to another eligible governmental plan of the same employer (and, for this purpose, the employer is not treated as the same employer if the participant's compensation is paid by a different entity);

(b) The transferor plan provides for transfers;

(c) The receiving plan provides for the receipt of transfers;

(d) The participant or beneficiary whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that participant or beneficiary immediately before the transfer; and

(e) The participant or beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the receiving plan unless the participant or beneficiary is performing services for the entity maintaining the receiving plan.

#### **11.02** *Plan-to-Plan Transfers from the Plan to the Plan of Another Employer.*

(a) At the direction of the Employer, the Administrator may permit a class of Participants and Beneficiaries to elect to have all or any portion of their Account transferred to another eligible governmental plan within the meaning of Section 457(b) of the Code and Section 1.457-2(f) of the Income Tax Regulations. (1) A transfer is permitted under this Section 11.02(a) for a Participant only if the Participant has had a Severance from Employment with the Employer and is an employee of the entity that maintains the other eligible governmental plan. (2) Further, a transfer is permitted under this Section 11.02 (a) only if the other eligible governmental plan provides for the acceptance of plan-to-plan transfers only with respect to the Participants and Beneficiaries and for each Participant and Beneficiary to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred.

(b) Upon the transfer of assets under this Section 11.02, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 11.02 (for example, to confirm that the receiving plan is an eligible governmental plan under paragraph (a) of this Section 11.02, and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to Section 1.457-10(b) of the Income Tax Regulations.

**11.03 Plan-to-Plan Transfers to the Plan.** At the direction of the Employer, the Administrator may permit a class of Participants who are participants in another eligible governmental plan under Section 457(b) of the Code to transfer assets to the Plan as provided in this Section. Such a transfer is permitted only if the other plan provides for the direct transfer of each Participant's interest therein to the Plan. The Administrator may require in its sole discretion that the transfer be in cash or other property acceptable to the Administrator. The Administrator may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with Section 457(e)(10) of the Code and Section 1.457-10(b) of the Income Tax Regulations and to confirm that the other plan is an eligible governmental plan as defined in Section 1.457-2(f) of the Income Tax Regulations. The amount so transferred shall be credited to the Participant's Account as a pre-tax deferral or a Designated Roth Contribution and shall be held, accounted for, administered and otherwise treated in the same manner as an Annual Deferral by the Participant under the Plan, except that the transferred amount shall not be considered an Annual Deferral under the Plan in determining the maximum deferral under Article IV.

**11.04 Permissive Service Credit Transfers.**

(a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Section 414(d) of the Code) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's pre-tax portion of the Account transferred to the defined benefit governmental plan. A transfer under this Section 11.04(a) may be made before the Participant has had a Severance from Employment.

(b) A transfer may be made under Section 11.04(a) only if the transfer is either for the purchase of permissive service credit (as defined in Section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan or a repayment to which Section 415 of the Code does not apply by reason of Section 415(k)(3) of the Code.

**11.05 Direct Transfers to this Plan.** Subject to the approval of the Administrator, this Plan shall accept cash transfers of Participants' accounts maintained under an eligible Section 457 plan directly to this Plan.

**ARTICLE XII - ROLLOVER TO THIS PLAN**

(a) Effective January 1, 2002, at any time, a Participant may contribute to the Plan in cash as a Rollover Contribution a qualified rollover amount from a qualified plan under Code Section 401(a), an individual retirement account or annuity, a deferred compensation plan under Code Section 457, or a tax-sheltered annuity under Code Section 403(b), provided that the Administrator, in its discretion, determines that the contribution satisfies all applicable requirements of the Code. Before a Rollover Contribution is made, the Participant shall designate the Investment Options in which he wishes his Rollover Contribution to be invested.

(1) The Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution or Designated Roth Contributions paid to the Plan from any eligible retirement plan that is not an eligible governmental plan under Section 457(b) of the Code.

(2) In addition, the Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution or any Designated Roth Contributions paid to the Plan from any eligible retirement plan that is an eligible governmental plan under Section 457(b) of the Code.

(b) A Rollover Contribution shall be allocated to the Rollover Account of the Participant as of the date of the contribution. The Participant's Rollover Accounts shall be distributed at the same time and in the same manner as the Participant elects for his regular account, however, the Rollover Accounts shall be subject to any applicable penalties under the Code.

(c) Notwithstanding any of the above, the Plan will accept a rollover contribution from another Roth Contribution Account under an applicable retirement plan described in Section 402A(e)(1) and only to the extent the rollover contribution is permitted under the rules of Section 402(c) and Section 1.402A-2 of the Treasury regulations. The Plan Administrator or other responsible party must provide the Plan with a statement indicating the first year of the five-taxable-year period and the portion of the rollover distribution that is attributable to investment in the contract under Code Section 72 or a statement that the distribution is a qualified distribution.

#### **ARTICLE XIII - ROLLOVER FROM THIS PLAN**

**13.01 Plan Distributions and Withholding Requirements.** Effective January 1, 2002, notwithstanding any provisions of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

#### **13.02 Definitions.**

(a) An "Eligible Rollover Distribution" means any distribution of all or any portion of the balance to the credit of a Distributee; except that an Eligible Rollover Distribution does not include:

(1) any installment payment that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's Beneficiary, or for a specified period of ten years or more;

(2) any distribution to the extent such distribution is a required minimum distribution under Code Section 401(a)(9) and Section 9.04 of the Plan; and

(3) any hardship distribution.

A portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such after-tax portion may be transferred only to an individual retirement account or annuity described in Code Section 408(a) or (b), or in a direct trustee-to-trustee rollover to a qualified trust under Code Section 401(a) or 403(a) that is part of a defined contribution or defined benefit plan, or to an annuity contract described in Code Section 403(b), and such trust or annuity contract separately accounts for amounts so transferred, including separate accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not includible. Effective January 1, 2008, an Eligible Rollover Distribution shall also mean a qualified rollover contribution to a Roth IRA within the meaning of Code Section 408A.

(b) An "Eligible Retirement Plan" means an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a), that accepts Eligible Rollover Distributions. An Eligible Retirement Plan shall also mean an annuity contract described in Code Section 403(b) and an eligible deferred compensation plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. Effective January 1, 2008, an Eligible Retirement Plan shall also mean a Roth IRA described in Code Section 408A.

(c) A "Distributee" means a Participant, Beneficiary, or alternate payee who is the owner of the Account. For Direct Rollover purposes, a Distributee means a Participant. In addition, a Participant's surviving spouse or a Participant's former spouse who is an alternate payee are Distributees with regard to the interest of the surviving spouse or former spouse. Effective January 1, 2007, a Beneficiary who is not a surviving spouse is a Distributee with regard to the interest of the Beneficiary.

(d) Effective January 1, 2007, and notwithstanding anything in the Plan to the contrary that otherwise would limit a Distributee's election under this Section, and to the extent allowed under the applicable provisions of the Code and the Treasury regulations, a Distributee who is a Beneficiary, but not a surviving spouse, spouse or former spouse who is an alternate payee may elect, at the time and in the manner prescribed by the Administrator, to have all or any part of his or her Account that qualifies as an Eligible Rollover Distribution paid in a direct trustee-to-trustee transfer to an Eligible Retirement Plan that is an individual retirement plan described in clause (i) or (ii) of Code Section 402(c)(8)(B). If such a transfer is made, (1) the transfer shall be treated as an Eligible Rollover Distribution (2) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of Code section 408(d)(3)(C), and (3) Code Section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such individual retirement plan.

(e) A "Direct Rollover" is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

#### **ARTICLE XIV - ADMINISTRATION OF PLAN**

**14.01** *Compliance with Code Section 457.* At all times, the Plan shall be administered in accordance with and construed to be consistent with Section 457 and Section 402 of the Code and any accompanying regulations.

**14.02** *Administrator Duties and Powers.* The Administrator shall have the authority to control and manage the operation and administration of the Plan and shall be a named fiduciary of the Plan.

(a) The Administrator shall have such power and authority (including discretion with respect to the exercise of that power and authority) as may be necessary, advisable, desirable or convenient to enable the Administrator to carry out its duties under the Plan. By way of illustration and not limitation, the Administrator is empowered and authorized:

(1) to establish rules, regulations, and procedures in accordance with 19-50-102 and 19-50-103, MCA, and procedures with respect to administration of the Plan, not inconsistent with the Plan and the Code, and to amend or rescind such rules, regulations, and procedures;

(2) to determine, consistently with the Plan, applicable law, rules or regulations, all questions of law or fact that may arise as to the eligibility for participation in the Plan and eligibility for distribution of benefits from the Plan, and the status of any person claiming benefits under the Plan, including without limitation, Participants, former Participants, Beneficiaries, Employees and former Employees;

(3) pursuant to Article IX of the Plan, to authorize payments from the Trust Fund to Participants, their Beneficiaries and other persons as the Administrator may determine;

(4) to contract with one or more Service Managers to perform education, enrollment, and administrative services under this Plan;

(5) to accept service of legal process;

(6) subject to and consistent with the Code, to construe and interpret the Plan as to administrative issues and to correct any defect, supply any omission or reconcile any inconsistency in the Plan with respect to same.

(b) Any action by the Administrator, which is not found to be an abuse of discretion, shall be final, conclusive and binding on all individuals affected thereby. The Administrator may take any such action in such manner and to such extent as the Administrator in its sole discretion may deem expedient and the Administrator shall be the sole and final judge of such expediency.

**14.03** *Advice.* The Administrator may employ or contract with one (1) or more persons to render advice with regard to its responsibilities under the Plan.

**14.04** *Delegation by Administrator.* The Administrator may from time to time delegate to an individual, committee or organization certain of its fiduciary responsibilities under the

Plan. Any such individual, committee or organization shall remain a fiduciary until such delegation is revoked by the Administrator, which revocation may be without cause and without advance notice. Such individual, committee or organization shall have such power and authority with respect to such delegated fiduciary responsibilities as the Administrator has under the Plan.

**14.05 Fiduciary Insurance.** The Board may require the purchase of fiduciary liability insurance for any of its fiduciaries to cover liability or losses occurring by reason of the act or omission of a fiduciary.

**14.06 Payment of Benefits.**

(a) Payments to Minors and Incompetents. If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, benefits will be paid to such person as the Administrator may designate pursuant to MCA 19-2-803 for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

(b) Correctness of Actions. The Administrator, if in doubt concerning the correctness of its action in making a payment of a benefit, may suspend payment until satisfied as to the correctness of the payment or the person to receive the payment, or may file, in any state court of competent jurisdiction, a suit, in such form as it considers appropriate, for legal determination of the benefits to be paid and the persons to receive them. The Administrator may also bring a suit or take such other action as it deems appropriate in the case of questions involving investment directions. The Administrator shall comply with the final order of the court in any such suit, and Participants, Beneficiaries, Administrator, and Service Manager shall be bound thereby insofar as such order affects the benefits payable under this Plan or the method or manner of payment.

**14.07 Payment of Expenses.** *All expenses and costs associated with the administration and investments of the plan shall be assessed against Plan assets. Administrative costs shall be explicitly assessed against individual Participant Accounts. Investment costs shall be assessed explicitly against each specific Investment Option in a manner determined appropriate by the management of each Investment Option and approved by appropriate federal regulating entities and the Trustees if appropriate.*

**ARTICLE XV - CLAIMS PROCEDURE**

Claims under the Plan shall be processed under the terms of the Montana Administrative Procedures Act, 2-4-701 et. seq. MCA.

**ARTICLE XVI - AMENDMENT OF THE PLAN**

Subject to the provisions of any applicable law, the Board may at any time amend or modify this Plan without the consent of the Participating Employers or of Participants (or any Beneficiaries thereof), provided that:

(a) All amendments shall become effective on the first day of the month following the giving of not less than forty five (45) days prior notice of the amendment to Participants.

- 24 -

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However, this forty-five (45) day notice requirement shall be applicable only if the amendment limits or otherwise restricts the deferral and distribution rights of the Participants. Notice shall be deemed given when the amendment is posted in the office of the Board and is sent to each Employer. No amendments shall deprive any Participant of any of the benefits to which the Participant is entitled under this Plan with respect to amounts credited prior to the effective date of the amendment.

(b) If the Plan is amended or modified, the Administrator shall nonetheless be responsible for the supervision and the payment of benefits resulting from amounts deferred prior to the amendment or modifications in accordance with this Article XVI.

#### **ARTICLE XVII - TERMINATION**

**17.01 Termination of Participating Employer.** (a) In the case of the complete or partial termination of the Plan, as to one (1) or more Employers, including a termination arising from the complete discontinuance of contributions, the affected portion of the Trust Fund shall continue to be held pursuant to the direction of the Board. On termination, the Participating Employer shall determine: (1) whether the assets shall continue to be held in this Plan for the benefit of affected Participants pursuant to Article IX; (2) whether there will be a direct transfer of all balances to another 457 plan pursuant to Article XI; or (3) whether each Participant shall have the individual right to elect to retain their existing account balance in this Plan or do a direct transfer to the new 457 plan.

(b) The Plan shall remain in full effect with respect to each Employer that does not terminate its participation in the Plan on behalf of its Employees.

**17.02 Termination of Plan.** The Board shall have the right to completely terminate this Plan, subject to any statutory requirements. In such a case, the Board shall distribute amounts deferred under the Plan to all Participants and Beneficiaries as soon as administratively practicable after the termination of the Plan.

#### **ARTICLE XVIII - NONASSIGNABILITY**

**18.01 Nonassignment.** No Participant, Beneficiary or designee may commute, sell, assign, transfer or otherwise convey the right to receive any payment under the Plan.

#### **18.02 Rights.**

(a) Except as provided in Section 9.12 and Section 18.02(b), the rights of Participants and Beneficiaries under this Plan shall not be subject to the rights of their creditors, and shall be exempt from execution, attachment, prior assignment or any other judicial relief or order for the benefit of creditors or other third person, except to the extent a benefit distributable under Article IX is subject to a federal tax levy.

(b) Notwithstanding Section 18.02(a), the Administrator may pay from a Participant's or Beneficiary's Account the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is

sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

#### **ARTICLE XIX - MISCELLANEOUS**

**19.01 Tax Treatment of Amounts Contributed.** It is intended that amounts deferred under this Plan constitute excludable gross income for federal and state income tax purposes until they are paid or otherwise made available to Participants or their Beneficiaries except to the extent that the amount deferred is a Designated Roth Contribution. This rule shall apply to state income taxation unless applicable state laws provide otherwise. Such amounts shall, however, be included as compensation to the extent required under Federal Insurance Contributions Act (FICA). The Administrator, the Employers and the Service Manager do not guarantee that any particular Federal or State income, payroll or other tax consequence will occur because of participation in this Plan.

**19.02 Contract.** This Plan, including any properly adopted amendment hereof, and the Participation Agreement, including any properly executed amendment thereof, shall constitute the total agreement or contract between the Employer and any Participant regarding the Plan. No oral statement regarding the Plan may be relied upon by any Participant.

**19.03 Conflicts.** In resolving any conflict between provisions of the Plan and in resolving any other uncertainty as to the meaning or intention of any provision of the Plan, the interpretation that (a) causes the Plan to constitute an eligible plan under the provisions of Code Section 457 and the Trust to be exempt from tax under Code Section 457, (b) causes the Plan to comply with all applicable requirements of the Code and (c) causes the Plan to comply with all applicable Montana statutes and rules, shall prevail over any different interpretation.

**19.04 Limitation on Rights.** Neither the establishment or maintenance of the Plan, nor any amendment thereof nor any act or omission under the Plan (or resulting from the operation of the Plan) shall be construed:

(a) as conferring upon any Participant, Beneficiary or any other person a right or claim against the Trust, Administrator, Employer or Service Manager, except to the extent that such right or claim shall be specifically expressed and provided in the Plan;

(b) as creating any responsibility or liability of the Employer for the validity or effect of the Plan;

(c) as a contract, including an employment agreement, between the Employer and any Participant or other person;

(d) as being consideration for, or an inducement or condition of, employment of any Participant or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights or obligations of the Employer or any Participant or other person to continue or terminate the employment relationship at any time; or

(e) as giving any Participant the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or other person at any time.



**19.05 USERRA and HEART Compliance.** Notwithstanding any provisions of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified uniformed services as defined in chapter 43 of title 38, United States Code ~~military service~~ shall be provided in accordance with USERRA, the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART"), including Code Section 457(g)(4) and Code Section 414(u).

(a) An Employee whose employment is interrupted by qualified ~~military service~~ uniformed services under Code section 414(u) or who is on a leave of absence for qualified ~~military service~~ uniformed services under Code section 414(u) may elect to make additional Annual Deferrals upon resumption of employment with the Employer equal to the maximum Annual Deferrals that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Annual Deferrals, if any, actually made for the Employee during the period of the interruption or leave). This right applies to five years following the resumption of employment, if sooner, for a period equal to three times the period of the interruption or leave).

(b) Effective January 1, 2009, an Employee whose employment is interrupted by qualified ~~military service~~ uniformed services or who is on a leave of absence for qualified ~~military service~~ uniformed services and who receives a differential wage payment within the meaning of Code Section 414(u)(12)(D) from the Employer, will be treated as an Employee of the Employer and the differential wage payment will be treated as Compensation.

(c) Effective January 1, 2007, death benefits payable under the Plan shall be paid in accordance with Code section 401(a)(37), which provides that in the case of a Participant who dies while performing qualified ~~military service~~ uniformed services (as defined in ~~Code section 414(u)~~ chapter 43 of title 38, United States Code), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified ~~military service~~ uniformed services) provided under the Plan had the Participant resumed and then terminated employment with the Employer on account of death.

(d) Effective January 1, 2009, a Participant who dies or becomes disabled while performing qualified ~~military service~~ uniformed services (as defined in ~~Code section 414(u)~~ chapter 43 of title 38, United States Code) shall be treated as if the Participant had resumed reemployment with the Employer in accordance with the Participant's reemployment rights under USERRA on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability. The amount of Annual Deferrals of a Participant treated as reemployed under this subsection shall be determined on the basis of the Participant's average actual Annual Deferrals for the lesser of (1) the 12-month period of service with the Employer immediately prior to qualified service, or (2) if service with the Employer is less than such 12-month period, the actual length of continuous service with the Employer.

**19.06 USERRA Compliance.** An Employee whose employment is interrupted by qualified ~~military service~~ uniformed services as defined in chapter 43 of title 38, United States Code under Code Section 414(u) or who is on a leave of absence for qualified ~~military service~~ uniformed services under Code Section 414(u) may elect to make additional Annual Deferrals upon resumption of employment with the Employer equal to the maximum Annual Deferrals that

the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Annual Deferrals, if any, actually made for the Employee during the period of the interruption or leave). This right applies to five years following the resumption of employment, if sooner, for a period equal to three times the period of the interruption or leave).

**19.07 Procedure When Distributee Cannot Be Located.** The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on Employer's or the Administrator's records, (b) notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans), and (c) the payee has not responded within six months. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Trust Fund shall continue to hold the benefits due such person.

**19.08 Erroneous Payments.** If the Administrator makes any payment that according to the terms of the Plan and the benefits provided hereunder should not have been made, the Administrator may recover that incorrect payment, by whatever means necessary, whether or not it was made due to the error of the Administrator, from the person to whom it was made or from any other appropriate party. For example, if any such incorrect payment is made directly to a Participant, the Administrator may deduct it when making any future payments directly to that Participant.

**19.09 Mistaken Contributions/Deferrals.** If any contribution or deferral (or any portion of a contribution or deferral) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer.

**19.10 Release.** Any payment to any Participant shall, to the extent thereof, be in full satisfaction of the claim of such Participant being paid thereby and the Administrator may condition payment thereof on the delivery by the Participant of the duly executed receipt and release in such form as may be determined by the Administrator.

**19.11 Liability.** The Administrator shall not incur any liability in acting upon any notice, request, signed letter, telegram or other paper or document or electronic transmission believed by the Administrator to be genuine or to be executed or sent by an authorized person.

**19.12 Governing Laws.** The law of the State of Montana shall apply in determining the construction and validity of this Plan, with venue in the First District.

**19.13 Necessary Parties to Disputes.** Necessary parties to any accounting, litigation or other proceedings relating to the Plan shall include only the Board. The settlement or judgment in any such case in which the Board is duly served shall be binding upon all affected Participants in the Plan, their beneficiaries, estates and upon all persons claiming by, through or under them.

**19.14 Severability.** If any provision of the Plan shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Plan shall continue to be fully effective.

**19.15 Supersession.** The terms of the Plan shall supersede any previous agreement between the parties pertaining to the Plan.

**19.16 Counterparts.** This Plan may be executed in one (1) or more counterparts, each of which shall constitute an original.

**IN WITNESS WHEREOF**, the undersigned has executed this amended and restated Plan on the date indicated:

**BOARD**

\_\_\_\_\_  
Date

\_\_\_\_\_  
President of the Board

The undersigned, as an agent for the Plan's recordkeeper, Great West Retirement Services, acknowledges and agrees that Great West Retirement Services will abide by the terms of this Plan Document for the State of Montana Public Employees' Deferred Compensation Plan.

**"SERVICE MANAGER"**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Great West Retirement Services

\_\_\_\_\_  
Print Name of Agent Signing Document